IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2836 of 2002

with

SPECIAL CIVIL APPLICATIONS Nos 1251 & 1734 of 1999

with

SPECIAL CIVIL APPLICATIONS Nos 9732 & 9733 of 1998

with

SPECIAL CIVIL APPLICATIONS Nos 9735 & 9736 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.J. LEUVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2836 of 2002

MR SV PARMAR for Petitioner No. 1

MS PREETI S PARMAR for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1

2. Special Civil Application No. 1251 of 1999

MR SV PARMAR for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/04/2004

ORAL JUDGEMENT

In this group of petitions, the main reliefs that have been claimed are refixation of seniority in the cadre of Range Forest Officer and the Assistant Conservator of Forests. In Special Civil Application No. 2836 of 2002 and in Special Civil Application No. 1734 of 2002 prayer for grant of deemed date of promotion in the cadre of Assistant Conservator of Forest is also made.

1.1. So far as Special Civil Application No. 2836 of 2002 is concerned, he is a member of Scheduled Caste whereas rest of the petitioners belong to Scheduled Tribes. All the petitioners are working in the Forest Department of the State Government.

1.2. It appears from the record of the petition that earlier the employees belonging to the general category had raised dispute regarding determination of seniority and also with regard to deemed date of promotion as Assistant Conservator of Forest. In the petition filed by one Dineshbhai Govindbhai Mistry being Special Civil Application No. 481 of 2003, on this issue, the learned Single Judge of this Court (Coram : P.B. Majmudar, J.) vide order dated 16th April, 2003, gave the following directions, in view of the fact that the department had not yet finalised the seniority list :-

" Finalise the seniority list of Assistant Conservator of Forests as early as possible and latest by 30th August, 2003. While preparing the final seniority list, the Department will also take into account the objections of the petitioner as well as the objections of the other set of employees, if any, and such seniority list may be finalised in accordance with law and considering the relevant Rules and Regulations as well as the material on record. It is for the Department to consider the effect of the judgment of this Court (Coram : M.S. Shah, J.) given in Special Civil Application No. 6325 of 1994 and other cognate matters, and, ultimately, after considering the facts and circumstances of the

> case and after considering the objections of the petitioners as well as the objections of the other employees, the final seniority list is to be prepared without any further delay and within the stipulated time, as indicated above. After finalisation of the said seniority list, if the petitioner or even if the respondents have any grievance, it is always open for them to challenge the same in accordance with law."

1.3. Thus, the Department was directed to finalise the seniority list latest by 30th August, 2003. However, Mr.S. V. Parmar learned advocate appearing for the petitioners in all the petitions, has stated at the bar that the said direction has not been complied with till this date and the seniority list is not finalised yet. The issue is still pending consideration of the appropriate authorities.

1.4. Since the issue involved in these petitions are identical, and in view of the fact that the seniority list is yet to be finalised, it would be in the interest of justice to issue identical direction vis-a-vis petitioners of all these petitions with certain modifications that so far as petitioners of Special Civil Application No. 2836 of 2002 and Special Civil Application No. 1734 of 2002 are concerned, they have passed the Departmental Examination for the Forest Officers within a stipulated time as specified under Rule 5 of the Gujarat Forest Department (Forest Officers Examination) Rules, 1972 (hereinafter referred to as "the Rules"). Further Rule 7 of the said Rules prescribes that the Range Forest Officers who fail to pass the examination within the period specified in Rule 5, he shall be entitled to appear at any time, in such examination and he shall be upon clearing the examination eligible for promotion to the higher post. Proviso 2 of the said Rules prescribes that such person shall lose his seniority and shall also become junior to all those who may have passed the examination earlier than him. Rule 8 provides for seniority to be continued even in the promotional post i.e. post of Assistant Conservator of Forest. These petitioners, therefore, will be at liberty to contend for grant of deemed date and the concerned authority will while deciding the same keep in view the provisions quoted above of the Departmental Examination Rules. Lastly, in view of the amendment introduced by the Constitution (Eighty Fifth Amendment) Act, 2001, introducing Clause 4 (A) under Article 16 of the Constitution of India, viz. for the words "in the matters of promotion to any class" the words "in the

matters of promotion, with consequential seniority to any class" shall be substituted.

1.5. The authorities may also keep in view that if the petitioners are falling under zone of consideration for promotion their case on that line be considered. If any precedent is required on this point, it can be had from the order passed by the learned Single Judge of this Court (Coram : S.D. Shah, J.) dated 29th January, 1992 in Special Civil Application No. 8792 of 1991 and its cognate matters.

1.6. For the reasons stated above, the respondents are directed to comply with aforesaid directions as early as possible, in any case not later than 30th September, 2004.

In view of the above, these petitions are partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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